



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1510-1998 (O&M)
Date of Decision:- 25.07.2024

Surinder Singh and another

... Appellants

Versus

Mehru (since deceased) through LRs

... Respondent(s)

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :- Mr. Satinder Khanna, Advocate
for the appellants (through video conferencing).

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RITU TAGORE, J.

1. This regular second appeal is directed against judgment and decree dated 07.01.1998, whereby the learned First Appellate Court reversed the judgment and decree of learned trial Court dated 15.03.1996 by allowing the appeal and dismissing the suit for permanent injunction filed by present appellants/plaintiffs against the respondent-defendant.

2. For the sake of convenience, parties to the *lis* hereinafter, shall be referred to by their original status in the suit before the trial Court.

3. Brief facts of the case are that the plaintiffs instituted a suit seeking a decree of permanent injunction, restraining the defendant from raising any construction on a specific portion of land bearing khewat No.87, khatuni



No.111, khasra No.506(6-13), situated in the area of village Darapur, Tehsil Phillaur, and from alienating the same without obtaining a partition. The plaintiffs assert that suit land is still joint and has not been formally partitioned between the parties. However, the defendant has threatened to raise construction forcibly on specific portion of the suit land and alienate that specific portion. Despite being requested to desist, the defendant has failed to listen, thereby necessitating to file the suit.

4. Upon receipt of the notice of the suit, defendant appeared and filed the written statement, and raised preliminary objections of *locus standi*, *estoppel*, maintainability of the suit etc. On merits, the defendant asserted that all the co-sharers are in separate possession of the land and have raised construction on the same. He is also in separate possession of the land and has constructed a *haveli* on it and a boundary wall. It is averred that, portion of the joint land with him is *ghair mumkin abadi* and he has been in possession of the same for the last 15-20 years. On the above averments, pleaded for the dismissal of the suit,

5. Since parties were at variance, learned trial Court framed following issues:-

1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiffs have no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD



4. Relief.

6. The parties led the evidence, as detailed in the judgment of learned trial Court. Upon assessment and appreciation of the evidence, the learned trial Court decreed the suit of the -plaintiffs, concluding that suit land is joint and defendant has no right to raise construction on a specific portion of the joint land, neither has right to alienate any specific parcel of the suit land until same is partitioned.

7. The defendant preferred the first appeal against the judgment and decree of learned trial Court. Upon reappraisal of the evidence, the learned First Appellate Court concluded that learned trial Court failed to properly appreciate the factual and legal aspects of the controversy on hand and materially erred in decreeing a suit for injunction; where as a suit for permanent injunction restraining a co-sharer from selling his share in the joint land is not maintainable. Further, co-sharers in possession of separate parcel of land by consent implied or express of other co-share has right to enjoy the separate possession till their shares are separated by effecting partition. As a result, First Appellate Court set aside the findings of learned trial Court, accepted the appeal and dismissed the suit.

8. Being aggrieved by the judgment of reversal, the appellants-plaintiffs filed the instant appeal.

9. Learned Counsel for the appellants-plaintiff contends that learned Appellate Court fell in error in upsetting a well reasoned judgment of the learned trial Court based on sound appreciation of facts and law. Learned counsel contends that learned Appellate Court returned a specific finding of



a fact that, suit land is joint. In view thereof the defendant, a co sharer, has no right to sell specific portion of the joint land or raise construction thereon. It is contended that the observation of the learned Appellate court holding that defendant is in specific portion of the land and has right to sell and raise construction on part of the suit land without partition, is fallacious and indefensible in eyes of law. A prayer is made to set aside the findings of the learned Appellate court and restore that of the learned trial Court.

10. I have heard the learned counsel for the appellants and have gone through the record with his valuable assistance.

11. The case of the plaintiffs is that suit land bearing khewat No.87 khatuni No.111 khasra No.506 (6-13), situated in village Darapur, is a joint holding of the parties and has not been partitioned between the co-owners and defendant has no right to alienate or raise construction on any specific portion of the land until same is partitioned. Learned Appellate Court on appraisal of the copy of jamabandi Ex.P-1/ Ex. D-1, for the year 1988-89, recorded a specific finding of a fact that suit land bearing khasra No.506, and other land is joint between the parties. By placing reliance on Full Bench of this Court in **Bharthu Vs Ram Sarup 1981 P.L.J. 204** observed that learned trial court erred in restraining the defendant, a co- sharer, from alienating his share in the suit land. Being a co-owner, defendant has right to sell his share in the joint holding. The learned Appellate after appraisal of the evidence of the plaintiff Surrender Singh, the defendant and his witness Gurnam Singh DW2 and the documentary evidence namely photographs (DW1/A to DW1/D) Aksh Shajra (Ex D-2) and Khasra Girdawari (Ex D-3), categorically observed, the separate



possession of the defendant on the specific portion out of the joint holding. Further, observed that the separate possession of the defendant on the parcel of the suit land has not been specifically denied by the plaintiffs either. Learned counsel for the plaintiffs was unable to point out any factual error committed by the learned Courts below, while narrating and appreciating the facts.

12. In given factual matrix, where the separate possession of the defendant, a co sharer, on a parcel of the joint land is established, he has right to enjoy separate possession until same is disturbed by partition. He has every right to alienate his share out of the joint land. Even if he sells specific portion which is in his possession, that sale will be nothing but sale of his share by him out of joint holding, which will be subject to the adjustment at the time of partition. Similarly, he has every right to raise construction on the portion of joint land which is in his exclusive possession which too will be subject to adjustment at the time of partition. It is not the case of the plaintiff that the land in possession of the defendant out of the joint holding is more than his own share. Therefore, remedy open to the plaintiffs-appellants is to seek partition of the joint holding. But they are legally not entitled to the relief of permanent injunction as prayed for by them against the defendant, for restraining him from alienating his share or specific portion in his possession out of the joint holding and from raising construction thereon, as all this would be subject to adjustment at the time of partition. The learned counsel for the appellant-plaintiffs also failed to refute the aforesaid settled legal principles of law as adumbrated in catena of judicial precedents.

13. No other point urged.

14. For the reasons aforementioned, I do not find any illegality or perversity, in the findings of the learned Courts below, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.
15. Resultantly, there is no merit in the appeal and is, hereby, dismissed.
16. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

25.07.2024
Rimpal/Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No